

Washington University Law Review

Volume 24 | Issue 4

January 1939

Review of “Sir William Blackstone,” By David Lockmiller

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Recommended Citation

Roland G. Usher, *Review of “Sir William Blackstone,” By David Lockmiller*, 24 WASH. U. L. Q. 622 (1939).
Available at: https://openscholarship.wustl.edu/law_lawreview/vol24/iss4/7

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indicated a growing willingness to cooperate with the federal-owned corporations in an endeavor adequately to cope with mutual problems. But the corporate form did not engender the cooperation; rather, the cooperation was forthcoming because of the type of activities which the corporations were performing. Orthodox administrative agencies performing such services would have received and, in fact, do receive similar cooperation. The author is aware of this fact but seems reluctant to emphasize it. Perhaps, the restricted scope of the treatment demands that she be so, yet, to discuss the influence of state laws on federal instrumentalities viewed structurally rather than functionally gives a somewhat distorted picture.

Because the largest part of the book is primarily descriptive, the treatment will be more revealing to laymen than helpful to lawyers, who are customarily more concerned with profound and penetrating analysis. But if the lawyer will not be interested in the first half of the book—which is largely a digest of statutes and decisions, he should find some interesting data in the latter half of the book dealing with the collaboration of administrative functions of the corporations and the several states. And all will find interesting the author's treatment of lobbying (in the discreet sense of the word) by the federal agencies in state legislatures. Believing as she does that it becomes the duty of national officials to anticipate and suggest to states the necessary complementary legislation, the author concludes "that considerable skill and flexibility have been developed by the government corporations in pooling national, state and local administrative resources for the harmonious functioning of all parties concerned."

Apart from contents, I found no liveliness of style. No one will consider this an effervescent book. It does not bubble with vitality and does not overflow with optimism. I do not suppose this book will be widely read or widely reviewed, and I doubt that it will make much difference.

WALTER FREEDMAN.†

SIR WILLIAM BLACKSTONE. By David A. Lockmiller. Chapel Hill: The University of North Carolina Press, 1938. Pp. xv, 295.

Blackstone has always been a book and not a man. Dr. Lockmiller's purpose was to reveal the man to the present generation of American lawyers. That Blackstone was the author of one of the best known books on the common law ever written, a judge of the Common Pleas, and compiler of a valuable collection of *Reports*, has always been remembered. That he was a teacher of law who did much to shape the character of legal education through his classes and lectures, quite aside from his books, has been generally forgotten. He also played a very considerable part in the learned life of Oxford's most learned college for nearly a quarter of a century; was an influential figure in shaping the history of two more colleges; and was one of the best business men in handling college property, collecting college debts, and securing contributions of any college don in Oxford's history. In order to complete the building of the library of All

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Souls, he studied architecture. To establish the Clarendon Press on a better basis, he acquired a practical knowledge of presses and printing. He found time to annotate Shakespeare and other literature, and, indeed, attracted some little attention from the critics of his own day, which was a good deal, and from critics of later generations which was a good deal more. Like most eighteenth century notables, he dabbled in occasional verse, which was on the whole of fair quality, on such subjects as the *Lawyer's Farewell to the Muse* and verses *On the Death of Prince Frederick*.

The reviewer does not wish to be unduly critical of an interesting and on the whole well-written book. Dr. Lockmiller has accomplished his purpose—a life of Blackstone in less than two hundred pages, for a third of this volume is occupied by an appendix containing two long poems, the text of his introductory lecture on the study of law, his opinion in *Ferrin v. Blake*, and other items of interest. But it is not possible to make a man live in so short a book. Indeed, Dr. Lockmiller's own volume is itself one of the best explanations of the fact that Blackstone has always been a book and not a man. He has added another *brief* life. It is not detailed enough to make the man move and breathe. Moreover, despite his own realization of the problem and his own purpose to show Blackstone the man, the *Commentaries* still occupy a third of his narrative and again, by that mere fact, subordinate the man to the book.

Partly for this reason, the volume does not establish Blackstone's career as an interesting life to study, one vital to his time or to later generations. If Dr. Lockmiller's researches have been exhaustive, he has unfortunately proved that there is not a great deal of real interest or value to tell about the man. He does not himself seem to feel that Blackstone distinguished himself as Recorder, as member of Parliament, or as judge. The importance of his career at Oxford is alleged rather than proved. Indeed, this volume itself substantiates the general judgment against which Dr. Lockmiller protests—that aside from the *Commentaries* Blackstone's life was relatively undistinguished and uninteresting. Yet Dr. Lockmiller's contention is probably entirely true: that Blackstone was a man worth knowing, who lived a full and interesting life worth writing about. But he has not written it. It cannot be told in so short a book nor without larger researches in history and political science than he has prosecuted.

Blackstone's education at Charterhouse and Pembroke, Oxford, was excellent. He achieved distinction when he was elected Fellow of All Souls in 1743, at the age of twenty. He had already enrolled at the Middle Temple in 1741. In 1746 he became Bursar of All Souls and dealt expertly with the college revenues, established a new system of accounting, and untangled the affairs of the Wharton estate and thus secured the payment of the Duke's large bequest. In 1753, with his first lecture on the common law at Oxford, he began a career as professor of law which largely influences the history of legal education in England and America, for he was famous in both long before the *Commentaries* appeared. His *Analysis of the Laws of England*, published in 1756, was a sort of first edition of the *Commentaries* and was being studied in America a year or two later. As a

teacher he must have been stimulating and cogent in high degree. Indeed, his fame as a teacher attracted attention to the *Commentaries* and gave the book its start. When the first volume appeared in 1765, his name was already established.

As early as 1746, he appeared as barrister and observer in the courts in London, and, attempting to divide his time between Oxford and London, he never attained much prominence as a barrister. From the notes of cases he heard in these years, and from those made as judge, his *Reports* were published after his death. He did practice law off and on until he became judge in 1770 and as counsellor-in-chambers and legal expert obtained a considerable reputation and earned perhaps some fairly large fees. In 1749 he added to his varied positions that of Recorder of Wallingford, an ancient borough lying between Oxford and London. Here he met Sarah Clitherow and after his marriage to her in 1761 it became his residence. He had by this time considerable means and lived in some style as a country squire. His marriage forced him to resign as Fellow of All Souls, but he retained his Vinerian Professorship and his position at New Inn Hall.

In 1761 he was elected member of the Society of Antiquaries and also member of Parliament. In Parliament especially this was a most important and picturesque period—one of great men and of great issues. The elder Pitt, Henry Fox, Newcastle, Shelburne, Bute, Wilkes, the King himself were men with whom Blackstone had connections. He was concerned with the Wilkes' trials, parliamentary privilege, the Middlesex elections, the Stamp Act and other American controversies, with Clive in India, in England, and in the House of Commons. With these Dr. Lockmiller has not dealt at length and what he does state is distinctly not to Blackstone's credit. He seems to feel that his hero's election to parliament in 1761 was the result of money actually paid by Fox from the Treasury and hints that Blackstone sold himself to the Crown, voted for it, argued for it with legal sophistry, and in general supported authority rather than liberty. He opposed parliamentary reform, opposed Wilkes and defended the indefensible position assumed by the House of Commons. His interest in prison reform is given at some length.

Here was rich material to work with. The footnotes and bibliography raise the presumption that Dr. Lockmiller has not searched the political and parliamentary material thoroughly. A good many statements in the footnotes and text show a superficial knowledge of the history of the period, while others are simply inaccurate. Such important recent books as Ruville's *Pitt* and Rikker's *Fox* do not appear in the bibliography or notes, and the author nowhere mentions or uses the large area of new information in the *Historical Manuscripts Commission Reports*. To be sure, the volume does not pretend to be an exhaustive treatment of Blackstone's life nor does the author claim to be an authority on the eighteenth century. But such statements discreditable to Blackstone should not be made without more careful examination of the available material.

We might have more confidence in Dr. Lockmiller's scholarship had he not seemingly accredited the decision in Shelley's Case to "Lord Coke" and

given its date as 1590.¹ Coke was junior counsel in Shelley's Case and not judge; the decision was in 1581; and the first volume of *The Reports* was published in 1600.

One of the most interesting and best written chapters in the book is "Blackstone in America," in which his influence is shown to have been greater in America than in England. The lectures, the *Analysis*, and the *Commentaries* were all brought to America within a year or two after their appearance in England and attracted greater attention in a new country looking for legal instruction and as yet without law schools. Blackstone's ideas had many traditions and influences to contend with in England; in America none. There he was at once triumphant and his ideas and books were adopted by Revolutionary leaders, by the new law schools, and by the framers of the Constitution.

ROLAND G. USHER.†

LABOR LAW. By Abraham Rotwein and Noah Rotwein. Brooklyn, New York: Harmon Publications, 1939. Pp. xxiii, 259.

This small and well-manufactured book is intended primarily for the use of students to supplement the standard case method of instruction in the field of labor law. The volume undoubtedly will be of value also to the many practicing lawyers who, although not specialists in the law of industrial relations, are occasionally called upon to advise clients actually or potentially involved in labor disputes. In addition to 195 pages of text, the volume contains five appendices, concerned chiefly with recent legislation, and a well-prepared index.

This work of Messrs. Rotwein may properly be described as modernistic. Of the 195 pages of text not more than 80 are devoted to common law, equity, and legislation as manifested in this country and England before 1914, when the Clayton Act was passed. The remaining portion of the book has to do chiefly with the American law of labor relations, both federal and state, as expanded and modified during the past twenty-five years, with particular attention paid to the Norris-LaGuardia Act of 1932, the National Labor Relations Act of 1935, and the Fair Labor Standards Act of 1938. The Table of Cases cites about 425 judicial and administrative opinions, and far more than a majority of these opinions were rendered since 1914.

A commendable feature of the book is the reference to certain experimental statutes which apparently influenced Congress in finally passing the more monumental statutes which, with a changed attitude on the part of judicial tribunals, have done so much to modify American labor law in recent years. Preceding the Norris-LaGuardia Act was the Clayton Act and certain state statutes intended to limit the equity powers of state courts in the matter of issuing injunctions. Preceding the National Labor Relations Act were the Erdman Act, the Railway Labor Act, and the

¹ P. 114.

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